

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

APRIL ROSE WILKENS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-05-254-M
)	
RON WARD, et al.,)	
)	
Defendants.)	

ORDER

On January 6, 2006, United States Magistrate Judge Valerie K. Couch issued a Report and Recommendation in this action brought pursuant to 42 U.S.C. § 1983, alleging violations of plaintiff's federal constitutional rights. The Magistrate Judge recommended (1) that defendants' Motion to Dismiss [docket no. 44] be granted on the ground that plaintiff has failed to satisfy the exhaustion requirement of 42 U.S.C. § 1997e(a) as to all claims asserted in this action; (2) that plaintiff's action be dismissed without prejudice to refile; and (3) that plaintiff's Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction [docket no. 51] be denied as moot. The parties were advised of their right to object to the Report and Recommendation by January 26, 2006. On January 18, 2006, plaintiff filed her objection.

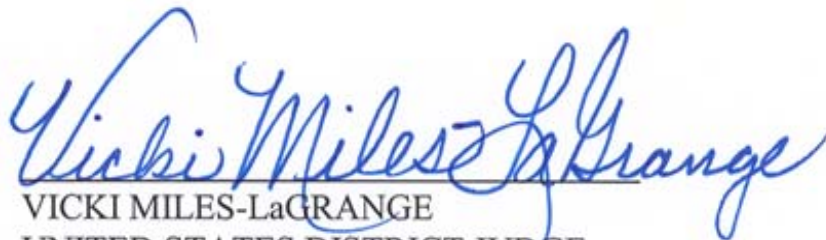
In the Report and Recommendation, the Magistrate Judge found that plaintiff had met her pleading burden as to the exhaustion of her medical and dental claims but found that plaintiff had not met her pleading burden as to the exhaustion of her claim that prison officials are failing to protect her from harm from another inmate. Specifically, the Magistrate Judge found that plaintiff had failed to show that she appealed to the DOC Administration Review Authority. In her objection, plaintiff contends that she did appeal her failure to protect claim to the DOC Administration Review Authority and that said authority returned her appeal for alleged failure to comply with requirements

of the grievance process. In support of this contention, plaintiff attaches her Notices of Exhaustion of Emergency Administrative Remedies [docket nos. 37 and 40]. Having carefully reviewed these notices, the Court finds that plaintiff has shown that she appealed her failure to protect claim to the DOC Administration Review Authority and that plaintiff has met her pleading burden as to the exhaustion of her failure to protect claim.

Accordingly, upon de novo review, the Court:

- (1) DECLINES TO ADOPT the Report and Recommendation issued by the Magistrate Judge on January 6, 2006, and
- (2) RECOMMITS this action to the Magistrate Judge for further proceedings.

IT IS SO ORDERED this 30th day of January, 2006.


VICKI MILES-LAGRANGE
UNITED STATES DISTRICT JUDGE